

BILL LOCKYER, Attorney General
of the State of California
JOSE R. GUERRERO, State Bar No. 97276
Supervising Deputy Attorney General
CATHERINE E. SANTILLAN,
Senior Legal Analyst
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5579
Facsimile: (415) 703-5480

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2044

CYNTHIA ARELLANO
2041 Beatrice Court, Apt. #6
San Jose, CA 95128

A C C U S A T I O N

Respiratory Care Practitioner License No. 20195

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about August 12, 1998, the Respiratory Care Board issued Respiratory Care Practitioner License Number 20195 to Cynthia Arellano (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2007, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
4 8.3, the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and
6 revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3750 of the Code states:

8 “The board may order the denial, suspension or revocation of, or the imposition of
9 probationary conditions upon, a license issued under this chapter, for any of the following
10 causes:

11 “(d) Conviction of a crime that substantially relates to the qualifications, functions,
12 or duties of a respiratory care practitioner. The record of conviction or a certified copy
13 thereof shall be conclusive evidence of the conviction.

14 “(g) Conviction of a violation of any of the provisions of this chapter or of any
15 provision of Division 2 (commencing with Section 500), or violating, or attempting to
16 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
17 violate any provision or term of this chapter or of any provision of Division 2
18 (commencing with Section 500).

19 7. Section 3752 of the Code states:

20 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
21 made to a charge of any offense which substantially relates to the qualifications, functions,
22 or duties of a respiratory care practitioner is deemed to be a conviction within the meaning
23 of this article. The board shall order the license suspended or revoked, or may decline to
24 issue a license, when the time for appeal has elapsed, or the judgment of conviction has
25 been affirmed on appeal or when an order granting probation is made suspending the
26 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the
27 Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of
28 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,

1 or indictment.”

2 8. California Code of Regulations, title 16, section 1399.370, states:

3 “For the purposes of denial, suspension, or revocation of a license, a crime or act
4 shall be considered to be substantially related to the qualifications, functions or duties of a
5 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
6 perform the functions authorized by his or her license or in a manner inconsistent with the
7 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
8 those involving the following:

9 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
10 abetting the violation of or conspiring to violate any provision or term of the Act.”

11 COST RECOVERY

12 9. Section 3753.5, subdivision (a) of the Code states:

13 "In any order issued in resolution of a disciplinary proceeding before the board, the
14 board or the administrative law judge may direct any practitioner or applicant found to have
15 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
16 investigation and prosecution of the case."

17 10. Section 3753.7 of the Code states:

18 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
19 include attorney general or other prosecuting attorney fees, expert witness fees, and other
20 administrative, filing, and service fees."

21 11. Section 3753.1 of the Code states:

22 "(a) An administrative disciplinary decision imposing terms of probation may
23 include, among other things, a requirement that the licensee-probationer pay the monetary costs
24 associated with monitoring the probation."

25 FIRST CAUSE FOR DISCIPLINE

26 (Conviction)

27 12. Respondent is subject to disciplinary action under sections 3750(d) and
28 3752 [conviction], and CCR 1399.370(a) in that she was convicted of disturbing the peace in

1 violation of Penal Code section 415(1). The circumstances are as follows:

2 13. On or about July 10, 2005, eight Santa Clara Sheriffs were dispatched to a
3 disturbance call involving two possibly intoxicated subjects. Deputy B. Moore saw a one inch
4 puncture mark on the right side of the victim, J.A.,’s forehead, consistent with a human bite mark.
5 He had red marks on his right upper forearm consistent with human bite marks. His lip was
6 swollen and bloody. He had a small one inch laceration on the palm of his left hand. He refused
7 medical attention for his injuries. Deputy Moore talked with the victim, and smelled a strong odor
8 of alcohol on his breath. J.A. stated that he and the respondent were in a dating relationship and
9 living together for the prior three and a half years. He stated that he and respondent had been
10 arguing, and that respondent bit him on the forehead about twenty minutes before the deputies
11 arrived at the residence.

12 A. Deputy Moore interviewed respondent. He smelled alcohol on her breath,
13 and noted that her speech was slurred and incoherent. Based on his observations, he believed she
14 was intoxicated. Deputy Moore arrested respondent for violating Penal Code section 273.5(a),
15 battery of a cohabitant.

16 14. On or about July 13, 2005, a criminal complaint titled *People of the State*
17 *of California vs. Cynthia Lorraine Arellano*, case no. 597785, was filed in Superior Court, Santa
18 Clara County. Count 1 charged respondent with a misdemeanor violation of Penal Code section
19 273.5(a), corporal injury on a spouse or cohabitant. Count 2 charged respondent with a violation
20 of Penal Code section 242, battery on a spouse or cohabitant.

21 15. On or about November 22, 2005, a Pretrial Conference was held. The
22 District Attorney added Count 3, a misdemeanor violation of Penal Code section 415.1,
23 disturbing the peace, and dismissed Counts 1 and 2. Respondent entered a plea of nolo
24 contendere to Count 3. She was convicted and ordered to attend at least one AA meeting per
25 week until the date of sentencing, and to pay fines. Upon completion, the District Attorney
26 agreed to reduce the charge to an infraction. Respondent was ordered to complete these
27 conditions or a diversion class would be imposed pursuant to Penal Code section 1203.097.

28 ///

1 16. On or about March 24, 2006, a sentencing hearing was held. Respondent
2 presented proof of attendance at AA meetings, and the conviction of Count 3, Penal Code
3 section 415.1, disturbing the peace, was reduced to an infraction.

4 17. Respondent's license is subject to disciplinary action under sections
5 3750(d) and 3752 [conviction] in that the facts underlying the conviction are substantially related
6 to the practice of respiratory care.

7 DISCIPLINE CONSIDERATIONS

8 18. To determine the degree of discipline, if any, to be imposed on
9 Respondent, Complainant alleges that on or about January 31, 2005, the Board of California
10 issued Citation Number 05-0132 based on respondent's conviction on her plea of nolo contendere
11 to Penal Code section 415(2), disturbing the peace. Respondent was ordered to pay an
12 administrative fine of \$500.00. The Citation is now final and is incorporated by reference as if
13 fully set forth. The facts surrounding Citation Number 05-0132 are as follows:

14 19. On November 12, 2003, respondent was arrested for violating Penal Code
15 section 242/243(a), battery on a spouse or cohabitant. San Jose Police Officer N. Levy
16 investigated a suspicious circumstance call. Upon arrival, he interviewed J.A. and respondent.
17 Both had been drinking vodka and beer, and were intoxicated. J.A. told Officer Levy that he and
18 respondent had been arguing, and that respondent became violent, throwing household items at
19 him, and then attacked him with a knife. J.A. stated that respondent cut him twice on the right
20 forearm. Officer Levy attempted to obtain a statement from respondent, but she was very
21 intoxicated and very uncooperative. She stated that she did not remember cutting J.A. with a
22 knife, and admitted that she had been drinking "quite a lot" of vodka with orange juice.
23 Respondent was arrested for violating Penal Code sections 245 and 273.5. At San Jose Pre-
24 Processing, respondent was uncooperative. She slipped off her handcuffs twice in the holding
25 cell. She refused to be fingerprinted, and defecated in the holding cell. Due to her uncooperative
26 and intoxicated state, she was taken directly to jail and booked.

27 ///

28 ///

1 20. On or about June 29, 2004, a Pretrial Conference was held. Judge Erica
2 Yew ordered respondent to attend thirty two hours anger management training, and to pay fines.
3 On a motion by the District Attorney, the Court dismissed Count 1, and added Count 2, a
4 misdemeanor violation of Penal Code section 415.2, disturbing the peace. On October 29, 2004,
5 respondent provided proof of payment of the fines, and proof of completion of thirty two hours
6 anger management.

7 MATTERS IN AGGRAVATION

8 21. Respondent has two additional alcohol-related arrests. On July 1, 2005,
9 seven Santa Clara County Sheriffs responded to a 911 call at respondent's residence. Sheriff
10 T. Bond's arrest report stated that respondent was intoxicated and her speech was so slurred it
11 was difficult to understand her. She admitted that she had a "couple glasses of wine" after work.
12 Her boyfriend, J.A., stated that respondent and he had been drinking and arguing, and that
13 respondent hit him with a beer bottle. She then hit him twice with her left closed fist on the side
14 of his face, and bit and scratched him. Based on J.A.'s injuries, the parties' statements, and a lack
15 of injury to respondent, she was arrested for violating Penal Code section 243(e)(1), domestic
16 battery.

17 22. Respondent was arrested on May 3, 2005 for a violation of Penal Code
18 section 273.5(a), corporal injury upon a cohabitant. Four Santa Clara County Sheriffs responded
19 to a family disturbance call. Officer Rivera interviewed respondent and observed that she
20 appeared to be intoxicated and smelled heavily of an alcoholic beverage. Her boyfriend, J.A., was
21 interviewed. He stated that he and respondent argued, and she scratched and bit him several
22 times in the arms and chest. J.A. was bleeding from an open cut on top of his head. He had
23 multiple scratches on his forehead, and an open cut on his right eyelid.

24 PRAYER

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein
26 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

27 1. Revoking or suspending Respiratory Care Practitioner License Number
28 20195, issued to Cynthia Arellano.

1 2. Ordering Cynthia Arellano to pay the Respiratory Care Board the costs of
2 the investigation and enforcement of this case, and if placed on probation, the costs of probation
3 monitoring;

4 3. Taking such other and further action as deemed necessary and proper.
5
6

7 DATED: September 11, 2006
8
9

10 Original signed by Christine Molina for:
11 STEPHANIE NUNEZ
12 Executive Officer
13 Respiratory Care Board of California
14 Department of Consumer Affairs
15 State of California
16 Complainant
17
18
19
20
21
22
23
24
25
26
27
28